

**Consideration of Petition by Charles V. DiGiovanna to Change the Atterbury Shooting Range Fees and of the Recommendations of the Department of Natural Resources in Response to the Petition; Administrative Cause No. 08-037D**

On February 21, 2008, Dr. Charles V. DiGiovanna of Bargersville submitted a petition to the Natural Resources Commission which stated in substantive part:

I am herewith petitioning the Commission to take action to modify the Department of Natural Resources Usage Fees Policy as it applies to the Atterbury Shooting Range. The DNR's policy currently permits charging all who enter the rifle and pistol shooting area of the range a minimum fee of \$15.00 per individual for two hours shooting time (regardless of the time of day or whether several individuals, including non-shooting observers, are sharing a single shooting position). In my view this policy has had the unintended consequence of dramatically changing the demographics of the range's users resulting in an increase of risk of harm not only to shooters encouraged by these fees to use other, non-supervised shooting venues but to the general public when less safe areas are employed for casual shooting by those unable or unwilling to pay such fees. In addition, the DNR's fees policy has put the range out of reach for those wishing to use it to teach gun safety such as, for example, scout troop leaders. Again, the risk of harm by shooting accident has been increased.

In the past the cost to supervise and maintain the range was subsidized by the DNR as a public service for Indiana citizens in the interest of public safety. I am requesting that the Commission take appropriate action, e.g., modify its rules or establish a Commission policy, to return the range to that status.

In accordance with the Commission's nonrule policy document regarding "Petitions for Rule Change and Nonrule Policy Document Change", Director Robert Carter, Jr. appointed a committee to review the petition and to make recommendations to the Commission and him. Wayne Bivans, Wildlife Chief for the Division of Fish and Wildlife, was appointed Chair, and Capt. David L. Windsor of the Division of Law Enforcement was appointed a member of the Committee. The Committee reported on May 21, 2008 as set forth below. The placement of the item was deferred to the September agenda because the Commission met in Portage in Northwestern Indiana in July.

The operation of the Atterbury Shooting Range is allowed under a standard Indiana Department of Natural Resources license and concession agreement pursuant to IC 14-19-1-2. A copy of the contract is provided with the memo.

A range concessionaire and subsequent fees were established and approved to move the cost of operation from the Indiana Department of Natural Resources

(DNR) to the user of the facility. It is a user-pay philosophy and the range has been contracted to a concessionaire through December 31, 2010. The intention from the onset of the facility planning was to employ this philosophy with no cost of operation to be subsidized from other sources.

Fees at the range in the early operational phase were set by the concessionaire and approved by the DNR to allow for operational cost and a reasonable profit to the concessionaire. This proved to be a problem early on when it became obvious to DNR program staff that additional measures needed to be accomplished for human safety and facility security. This request was taken to the concessionaire and subsequently additional staff had to be hired by him to provide for the additional safety and maintenance considerations. This additional requirement made it necessary for the fees to be increased.

Contact was made with the petitioner to discuss his ideas on this issue. He intends to stay abreast of this situation and possibly follow-up with the commission upon this response being submitted to the commission.

#### Conclusion

The DNR intends to continue the philosophy of user-pay as a support means for the operation of the range facility using the current fee structure. To that end it is imperative that the operating concessionaire be able to charge a fee that will enable him to maintain the facility as well as provide adequate safety consideration to the user.

It will be possible to revisit some aspects of the concession contact prior to the December 31, 2010 contract expiration. The first three items below should be discussed with the concessionaire at the earliest possible opportunity to determine if they have merit and can be implemented. The last item should be considered by the Department/Division leadership for possible implementation.

[1] Review policy on organized group usage and possibly offer reduced fees to those groups. Create promotional/information material that informs users of those opportunities. Display and distribute these materials to the public.

[2] Review minimum time requirements and consider allowing one hour minimums rather than the current two hour minimum.

[3] Review the feasibility of creating a non resident fee.

[4] Review the possibility of creating a nonrule policy that would give the Natural Resources Commission the oversight authority for range fees and ultimately guidance to concessionaires in setting the user fees.

In a letter dated June 30, 2008, Charles DiGiovanna acknowledged receipt of the Committee recommendations and offered the following supplemental comments:

I am disappointed that the DNR has chosen to adopt a “user-pay” philosophy in operating the facility rather than to continue to acknowledge by subsidizing the facility’s operating costs that its obligations to support increased firearms safety is more important than increased revenue.

Nevertheless, I am most pleased with items...chosen for Commission review and/or consideration listed in the Committee’s response. However, there is one element of the current fees policy not addressed in the response about which I feel quite strongly and that is the current policy of charging every individual assigned a single shooting position the full fee regardless of the fact that only one individual is permitted to shoot at the position at any given time. Typically, a second person serves as an observer or spotter.

In truth, since the range fees are time based, i.e., per hour, they represent a form of ‘rental’ for the use of the shooting position and they should, therefore, be based on that premise unlike, for example, use of a lane in a bowling alley where several people using a single lane will tend to extend the time that lane is occupied thereby justifying charging each bowler as an individual.

It is certainly reasonable to limit the number of individuals assigned to a given shooting position to two, e.g., a shooter and spotter, so as to minimize distractions that can lead to reduced safety and concentration of the shooters, but I see no justification for charging an observer the same fee as that paid by the shooter actually occupying a given shooting position thereby doubling the ‘rental’ for the position. Since the concessionaire incurs no additional cost when a second individual is assigned to a given position, there is no justification for the policy as it is now defined. I submit that this concern should be reviewed at the same time as those identified in the attached response.

## **Recommendations**

The DNR Committee presents the following items for discussion, recommendations and consideration for possible action in response to the petition. The Commission is requested to advise whether the DNR should discuss the first three items with the concessionaire, at the earliest possible opportunity, to determine if they have merit and can be implemented. The Commission is requested to advise whether the DNR should be asked to draft a nonrule policy document, for subsequent review and possible approval by the Commission, to implement the matters contained in the fourth item.

## **AGENDA ITEM #14**

1. Review policy on organized group usage and possibly offer reduced fees to those groups. Create promotional or information material that informs users of those opportunities. Display and distribute these materials to the public.
2. Review minimum time requirements and consider allowing one hour minimums rather than the current two hour minimum.
3. Review the feasibility of creating a non-resident fee.
4. Review the possibility of creating a nonrule policy document by which the Natural Resources Commission would exercise oversight for the development of range fees and provide guidance to concessionaires in setting user fees.